

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

**BERNARD E. BENNETT and ELSIE
M. BENNETT, husband and wife,**

Plaintiffs,

v.

**ALLSTATE LIFE INSURANCE
COMPANY, et al.**

Defendants.

CIV-21-821-SLP

Civil Action No. _____

**State Court Case No. CJ-2021-3174
District Court in and for
Oklahoma County, Oklahoma**

NOTICE OF REMOVAL

Defendant Allstate Life Insurance Company (“Allstate”) hereby files this Notice of Removal of this case from the District Court in and for Oklahoma County, Oklahoma, where it is currently pending as Case No. CJ-2021-3174, to the United States District Court for the Western District of Oklahoma. This cause is removable pursuant to 28 U.S.C. §§ 1332 and 1441 because there is complete diversity of citizenship between Plaintiffs and Allstate, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. In support of its Notice of Removal, Allstate respectfully shows the Court as follows:

1. Plaintiffs Bernard E. Bennett and Elsie M. Bennett (“Plaintiffs”) instituted this civil action in the District Court in and for Oklahoma County, Oklahoma on July 29, 2021. Attached hereto are copies of all pleadings and other documents that were previously filed with the state court, along with a copy of the state court docket sheet:

a. Petition (**Exhibit 1**)

- b. Entry of Appearance of Steven S. Mansell (**Exhibit 2**)
- c. Entry of Appearance of Kenneth G. Cole (**Exhibit 3**)
- d. Entry of Appearance of Keith F. Givens (**Exhibit 4**)
- e. Docket Sheet (**Exhibit 5**)

Counsel for Allstate hereby verifies Exhibits 1 through 5 are true and complete copies of all pleadings and other documents filed in the state court proceeding.

2. This action could have been originally filed in this Court pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Allstate, and the amount in controversy exceeds the \$75,000 jurisdictional minimum.

3. Allstate was served with the Summons and Complaint through the Oklahoma Insurance Department on August 3, 2021. *See* Letter from Oklahoma Insurance Department, attached hereto as **Exhibit 6**. Therefore, this Removal is timely pursuant to Fed. R. Civ. P. 6(a) and 28 U.S.C. § 1446(b)(1).

4. The United States District Court for the Western District of Oklahoma is the federal district embracing the District Court in and for Oklahoma County, Oklahoma, where this suit was originally filed. Venue is therefore proper in this Court pursuant to 28 U.S.C. §§ 116(c) and 1441(a).

DIVERSITY OF CITIZENSHIP

5. Plaintiffs are citizens and residents of the State of Oklahoma.

6. Allstate is a life insurance company organized under the laws of the State of Illinois and maintains its principal place of business in Northbrook, Illinois. *See* Declaration of Daniel G. Gordon, attached hereto as **Exhibit 7**, at ¶ 2. Thus, Allstate is not

now, and was not at the time of the filing of the Complaint, a citizen of the State of Oklahoma within the meaning of the Acts of Congress relating to the removal of cases.

7. In addition, the John Doe Defendant is not considered for purposes of removal. *See* 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.”); *see also McPhail v. Deere & Co.*, 529 F.3d 947, 951 (10th Cir. 2008) (“Under the federal removal statutes the presence of ‘John Doe’ defendants at the commencement of an action creates no impediment to removal.”)

8. Thus, the complete diversity of citizenship requirement for removal is satisfied.

AMOUNT IN CONTROVERSY

9. Plaintiffs’ Petition states, “[t]he amount sought as damages is in excess of the amount required for diversity jurisdiction pursuant to § 1332 of Title 28 of the United States Code.” *See* Exh. 1 at 5, 6; *see also* 28 U.S.C. § 1446(c)(2) (“If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy[.]”

10. Therefore, the amount in controversy exceeds the jurisdictional minimum of \$75,000.

MISCELLANEOUS

11. A copy of this Notice of Removal is being filed with the Clerk for the District Court in and for Oklahoma County, Oklahoma, as provided by law, and written notice is being sent to Plaintiffs' counsel.

12. Allstate has not previously sought similar relief with respect to this matter.

13. The prerequisites for removal under 28 U.S.C. § 1441 have been met.

14. The allegations of the Notice of Removal are true and correct and within the jurisdiction of the United States District Court for the Western District of Oklahoma, and this cause is removable to the United States District Court for the Western District of Oklahoma.

15. If any question arises as to the propriety of the removal of this action, Allstate respectfully requests the opportunity to present a brief and oral argument in support of its position.

WHEREFORE, ALL PREMISES CONSIDERED, Defendant Allstate Life Insurance Company, by counsel, desiring to remove this civil action to the United States District Court for the Western District of Oklahoma, being the district for the county in which such civil action is pending, prays that the filing of the Notice of Removal, the service of written notice thereof on Plaintiffs' counsel, and the filing of a copy of this Notice of Removal with the Clerk for the District Court in and for Oklahoma County, Oklahoma shall effect the removal of said civil action to this Honorable Court.

Dated: August 20, 2021

Respectfully Submitted,

s/Dru A. Prosser

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email and U.S. mail first class on August 20, 2021 on the following:

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